

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

WILLIAM LLOYD NELSON,

Petitioner,

v.

J. M. ROBERTSON,

Respondent.

Case No. [19-cv-08057-EMC](#)

**ORDER GRANTING IN PART AND  
DENYING IN PART PETITIONER’S  
MOTION FOR RECONSIDERATION,  
AND REQUIRING AN ELECTION  
FROM PETITIONER**

Docket No. 41

**I. INTRODUCTION**

William Lloyd Nelson filed this *pro se* action for a writ of habeas corpus under 28 U.S.C. § 2254. Respondent moved to dismiss for, *inter alia*, failure to exhaust all claims, Docket No. 25; Mr. Nelson filed a “traverse” which the Court construed as an opposition to Respondent’s motion, Docket No. 30;<sup>1</sup> and Respondent filed a reply, Docket No. 34. The Court found that Mr. Nelson had filed a mixed petition of exhausted and unexhausted claims, granted in part and denied in part Respondent’s dismissal motion, and ordered Mr. Nelson to elect how to proceed. Docket No 38.

Mr. Nelson filed a motion seeking reconsideration of the Court’s order, arguing that he in fact exhausted all claims. Docket No. 41 (“motion for reconsideration” or “Recon Motion”). For the reasons given below, the Court **GRANTS in PART** and **DENIES in PART** Mr. Nelson’s motion for reconsideration.

The Court suspects, but is not sure, that Mr. Nelson would like a *Rhines* stay.

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<sup>1</sup> Mr. Nelson appears to believe that the Court struck or otherwise ignored his filing. *See* Recon Mot. at 31. The Court did not, instead merely correcting Mr. Nelson’s terminology. If and when Respondent files an answer to the Petition, Mr. Nelson will have an opportunity to file a traverse.

Accordingly, the Court will give Mr. Nelson an additional opportunity to state his preference **clearly and unequivocally**.

## II. RELEVANT BACKGROUND

Mr. Nelson was convicted of attempting to murder a police officer engaged in the performance of that officer's duty, specifically the attempt to serve documents on Mr. Nelson in a civil matter. *See People v. Nelson*, No. A144063, 2017 WL 3712440, at \*1–2 (Cal. Ct. App. Aug. 29, 2017) (unpublished). On direct review, the California Court of Appeal affirmed Mr. Nelson's conviction. *See id.* Mr. Nelson sought review in the California Supreme Court, which denied his request. *See* Docket No. 25-2. Mr. Nelson then collaterally attacked his conviction in state court. His state habeas petitions were denied by Humboldt County Superior Court, Docket Nos. 25-3, 25-4; the California Court of Appeal, Docket Nos. 25-5, 25-6; and the California Supreme Court, Docket No. 25-9.

Mr. Nelson filed a federal habeas petition in this Court, *see* Docket No. 1, which was dismissed with leave to amend, *see* Docket No. 9. Petitioner filed an amended federal habeas petition. *See* Docket No. 14 ("Amended Petition"). The Court reviewed the Amended Petition pursuant to 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, and identified the following claims and subclaims:

(1) "The prosecution deliberately interfered with [Mr. Nelson's] Sixth Amendment right to counsel by conspiring with appointed defense counsel ('Greg') [a] to suppress the ballistics and forensic expert investigation, [b] to suppress material evidence, [c] to coerce [him] not to testify, and [d] to compromise his cross-examination to reduce the prosecution's burden to prove its case beyond a reasonable doubt to no burden at all," Docket No. 14 at 6; (2) the prosecutor, "in concert with defense counsel, knowingly elicited perjured and false testimony from State's witnesses" during the preliminary hearing and trial, *id.* at 31; (3) "the prosecution team knowingly planted physical evidence at the crime scene and introduced it at" trial, *id.* at 37; (4) the prosecution failed to disclose material impeachment evidence during trial; (5) the prosecution "discarded or failed to preserve evidence they knew could be expected to play a significant [role in the] defense," *id.* at 38; (6) trial counsel provided ineffective assistance by failing to file a timely motion to suppress the evidence obtained in violation of Mr. Nelson's Fourth Amendment rights; (7) trial counsel's performance "was so deficient that it amounted to a complete deprivation of counsel" at the [a] closing argument, [b] sentencing, and [c] motion for new trial stages, *id.* at 39; (8) Mr. Nelson was deprived of a

1 meaningful opportunity to present a complete defense; (9) appellate  
 2 counsel provided ineffective assistance of counsel; and (10) Mr.  
 Nelson was deprived of a fair trial because the trial judge was  
 biased.

3 Docket No. 16 (“Screening Order”) at 2-3.

4 Respondent moved to dismiss arguing, *inter alia*, that Mr. Nelson had failed to exhaust  
 5 certain claims. Docket No. 25. The Court found that Mr. Nelson had failed to exhaust Claims 1d,  
 6 2, 4 as to some evidence, 6, 7(c), and 8 as to some aspects of Mr. Nelson’s defense.

### 7 **III. MOTION FOR RECONSIDERATION**

8 A motion for leave to file a motion for reconsideration may be filed prior to the entry of a  
 9 final judgment in the case. Civ. L.R. 7-9(a). “The moving party must specifically show  
 10 reasonable diligence in bringing the motion” and one of the following circumstances:

- 11 (1) That at the time of the motion for leave, a material difference in fact or law exists from  
 12 that which was presented to the Court before entry of the interlocutory order for which  
 13 reconsideration is sought. The party also must show that in the exercise of reasonable  
 14 diligence the party applying for reconsideration did not know such fact or law at the  
 15 time of the interlocutory order; or
- 16 (2) The emergence of new material facts or a change of law occurring after the time of  
 17 such order; or
- 18 (3) A manifest failure by the Court to consider material facts or dispositive legal  
 19 arguments which were presented to the Court before such interlocutory order.

20 Civ. L.R. 7-9(b). A motion for reconsideration may be denied even where brought by a pro se  
 21 habeas petitioner, if the litigant does not bear his burden. *See Ybarra v. McDaniel*, 656 F.3d 984,  
 22 998 (9th Cir. 2011) (affirming district court’s denial of habeas petitioner’s motion for  
 23 reconsideration where petitioner’s evidence of exhaustion was not “newly discovered” because  
 24 petitioner was aware of evidence almost one year prior to the district court’s denial of the  
 25 petition).

26 Here, Mr. Nelson relies on Civil Local Rule 7-9(b)(3). Specifically, he argues that he fully  
 27 exhausted Claims 1d, 2, 4, 6, 7(c), and 8. *See generally*, Recon Mot. Mr. Nelson thus must show a  
 28 “manifest” error by the Court.

1     A.     The Motion For Reconsideration Is Granted As To Claims 4(a), (b), (d)-(f), 6, and 8

2             With the additional information provided in Mr. Nelson’s motion for reconsideration, the  
3     Court was able to discern that Mr. Nelson raised Claims 6, 8, and parts of Claim 4 to the  
4     California Supreme Court, although these were raised as arguments supporting other grounds for  
5     relief rather than as separate grounds for relief.

6             To exhaust, Mr. Nelson needed only to give the California Supreme Court a “full and fair  
7     opportunity to resolve” these claims. *O’Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999).  
8     Moreover, the Ninth Circuit repeatedly has instructed district courts to give liberal construction to  
9     state-court habeas petitions filed by pro se petitioners. *See Peterson v. Lampert*, 319 F.3d 1153,  
10    1159 (9th Cir. 2003) (suggesting pro se petitions should be read more liberally than counseled  
11    petitions when evaluating whether a claim was exhausted); *Sanders v. Ryder*, 342 F.3d 991, 999  
12    (9th Cir. 2003) (“*Peterson* makes clear that, for the purposes of exhaustion, pro se petitions are  
13    held to a more lenient standard than counseled petitions.”); *Kyzar v. Ryan*, 780 F.3d 940, 947 (9th  
14    Cir. 2015) (same, citing *Peterson*, 319 F.3d at 1159, and *Sanders*, 342 F.3d at 999). When given  
15    the liberal construction due to pro se petitioners, it appears that Mr. Nelson made the California  
16    Supreme Court aware of the constitutional issues presented by Claims 4(a), (b), (d)-(f), 6, and 8,  
17    and gave that Court a sufficient opportunity to rectify those issues. *See, e.g., Lounsbury v.*  
18    *Thompson*, 374 F.3d 785, 789 (9th Cir. 2004) (petitioner who limited final state habeas appeal to  
19    procedural competency challenge made fair presentation to state courts of substantive competency  
20    claim when: (1) substantive competency claim closely related to, and concerned same trial court  
21    ruling as, concededly raised procedural competency claim; (2) under state supreme court rules,  
22    court could have reached claim because it was raised in court of appeals; (3) text of petition for  
23    review included claim; and (4) state supreme court could have discussed substantive competency  
24    claim, had it granted review, in course of discussing harmless error with regard to raised  
25    procedural competency claim).

26             In Claim 4, Mr. Nelson contends that “the prosecution failed to disclose material  
27     impeachment evidence during trial,” Screening Order at 2, and specifically enumerated seven  
28     categories of evidence that were not disclosed, *see* Am. Pet. at 36-37. Mr. Nelson contends that

these seven sub-claims were raised in grounds 1, 5, 11, 14, 17, 24, 26, and 37-39 of his petition to California Supreme Court. *See* Recon Mot. at 40-41. The Court has reviewed the grounds presented to the California Supreme Court and concludes that, with liberal construction, Mr. Nelson sufficiently exhausted Claims 4(a), (b), and (d)-(f), but did not exhaust Claim 4(c).

- Claim 4(a) contends that the prosecution failed to disclose material impeachment evidence demonstrating attempted extortion by the prosecution. *See* Am. Pet. at 36. Liberally construed, an argument to this effect was made in support of ground 36 of the state petition, *see* Docket No. 25-11 at 104 (arguing the prosecution “knew or should have known” that a draft probation report was a “flagrant attempt to extort money from petitioner”),<sup>2</sup> which otherwise argued that state officials conspired against Mr. Nelson by fabricating a probation report, *see id.* at 102 (summarizing ground raised to California Supreme Court).
- Claim 4(b) contends that the prosecution failed to disclose material impeachment evidence of “safety statements” by two police officers Am. Pet. at 36. Liberally construed, an argument to this effect was made in support of ground 38, *see* Docket No. 25-11 at 116 (arguing that the prosecution conspired with defense counsel to suppress the fact that an officer “gave a safety statement”), which otherwise argued that the prosecution “withheld and fabricated evidence,” and specifically that the prosecution “staged an interview,” *id.* (summarizing ground raised to California Supreme Court).
- Claim 4(c) contends that the prosecution failed to disclose material impeachment evidence of letters, a deed, an escrow document, and bank records, which would have showed the jury that Mr. Nelson had the legal right to be on his property. *See* Am. Pet. at 36. In his motion for reconsideration, Mr. Nelson makes no attempt to direct the Court to a location in the California Supreme Court petition where he

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<sup>2</sup> The petition presented to the California Supreme Court bears at least three different page numbering schemes. For ease of reference, the Court refers to the page numbers applied by the ECF system.

argued that the prosecution suppressed bank records, escrow documents, letters, or a deed. *See generally*, Recon Mot. The Court also did not see a claim raised to the California Supreme Court concerning Mr. Nelson’s right to be on the property. *See generally*, Docket Nos. 25-9, 25-10, and 25-11. Even with liberal construction, Claim 4(c) is unexhausted.

- Claim 4(d) contends that the prosecution failed to disclose material impeachment evidence regarding the number of shots fired by police officers, bullet holes caused by those shots, and the locations of the shells after the officers’ shots. Am. Pet. at 36. Liberally construed, an argument to this effect was made in support of ground 11, *see* Docket No. 25-10 at 147 (arguing the government failed to preserve evidence related to bullet holes and trajectories, and discarded shell casings), which otherwise argued the prosecution failed to collect and preserve evidence, *see id.* at 144 (summarizing ground raised to California Supreme Court); ground 14, *see id.* at 170 (arguing that photographs of bullet holes and “a slug” were suppressed), which otherwise argued Mr. Nelson was prevented from presenting a complete defense, *see id.* at 167 (summarizing ground raised to California Supreme Court); ground 17, *see id.* at 190 (arguing counsel lied about “the existence of [a] shell locations ‘diagram’”), which otherwise argued that trial counsel was ineffective because counsel lied during *Marsden* hearings, *see id.* at 189 (summarizing ground raised to California Supreme Court); and ground 26, *see* Docket No 25-11 at 45 (arguing that defense counsel was ineffective for failing to retrieve “slugs” from Mr. Nelson’s yard), which otherwise argued that “the perpetrators conspire[ed] under color of state law against petitioner to murder petitioner and plant evidence to cover up police misconduct,” *id.* at 39 (summarizing ground raised to California Supreme Court).
- Claim 4(e) contends that the prosecution failed to disclose material impeachment evidence of audio recordings and transcripts of interviews. Am. Pet. at 37. Liberally construed, an argument to this effect was made in support of ground 1,

1            *see* Docket No. 25-10 at 25 (arguing that interviews were not disclosed), which  
 2            otherwise argued that the Humboldt County Superior Court abused its discretion in  
 3            denying Mr. Nelson’s habeas petition, *see id.* at 6 (summarizing ground raised to  
 4            California Supreme Court); and in ground 5, *see id.* at 105 (arguing that audio  
 5            recordings of interviews were suppressed as a result of collusion), which otherwise  
 6            argued that petitioner’s Sixth Amendment rights were violated by his trial counsel’s  
 7            collusion with the prosecution, *see id.* at 98 (summarizing ground raised to  
 8            California Supreme Court).

- 9            • Claim 4(f) contends that the prosecution failed to disclose material impeachment  
 10           evidence of conflicts between police reports. Am. Pet. at 37. Liberally construed,  
 11           an argument to this effect was made in support of ground 37, *see* Docket No 25-11  
 12           at 114-15 (arguing that an officer made inconsistent statements to other officers),  
 13           which otherwise argued that Mr. Nelson was deprived of effective assistance of  
 14           counsel, *see id.* at 110 (summarizing ground raised to California Supreme Court);  
 15           and ground 38, *see id.* at 116 (arguing the prosecution “staged an interview” to  
 16           obtain a more favorable police report), which otherwise argued that the prosecution  
 17           “withheld and fabricated evidence,” *id.* (summarizing ground raised to California  
 18           Supreme Court).

19           Thus, the Court concludes that if the state petition is given liberal construction, Claims 4(a), (b),  
 20           and (d)-(f) are exhausted, but Claim 4(c) is unexhausted.

21           In Claim 6, Mr. Nelson contends that trial counsel was ineffective because trial counsel  
 22           failed to “file a timely suppression motion to suppress evidence obtained in violation of [Mr.  
 23           Nelson’s] Fourth Amendment rights.” Am. Pet. at 37. Mr. Nelson contends that the basis for  
 24           Claim 6 may be found in ground 13 of the petition to the California Supreme Court. Recon Mot.  
 25           at 24. In ground 13, Mr. Nelson argued, *inter alia*, that his trial counsel’s “refusals to file a  
 26           motion to suppress the prosecution’s fabricated evidence were likely the result of his collusion  
 27           with the prosecution.” Docket No. 25-10 at 157. Although the more natural reading of ground 13  
 28           is that trial counsel violated Mr. Nelson’s rights by colluding with the prosecution, Mr. Nelson is



1 correct that the underlying argument of this ground is the same as Claim 6: that trial counsel failed  
2 to move to suppress evidence. *See id.* Liberally construing the state petition, the Court concludes  
3 that Claim 6 was exhausted.

4 In Claim 8, Mr. Nelson contends that he “was deprived of any meaningful opportunity to  
5 present a complete defense,” because of “the misconduct of trial counsel and the prosecution.”  
6 Am. Pet. at 38. Mr. Nelson contends that Claim 8 was raised in ground 14 presented to the  
7 California Supreme Court. *See Recon Mot.* at 28. Ground 14 did indeed argue that Mr. Nelson  
8 was “denied ‘a meaningful opportunity to present a complete defense,’” Docket No. 25-10 at 167,  
9 although he attributed this deprivation specifically to collusion between his defense counsel and  
10 the prosecution rather than to general misconduct, *see id.* at 168. Liberally construing the state  
11 petition, the Court concludes that Claim 8 was exhausted.

12 Although the Court reconsiders its earlier ruling as to Claims 4(a), 4(b), 4(d)-(f), 6, and 8, the  
13 Court notes that this reconsideration is done in the interests of justice, and not because Mr. Nelson has  
14 fulfilled his obligations under Civil Local Rule 7-9(b)(3). *See Fed. R. Civ. P.* 54(b) (“any order . . .  
15 that adjudicates fewer than all the claims . . . does not end the action as to any of the claims or  
16 parties and may be revised at any time before the entry of a judgment”); *see also School Dist. No.*  
17 *IJ v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993) (noting that, inter alia, an order may be  
18 reconsidered if “the initial decision was manifestly unjust”). In his opposition to Respondent’s  
19 dismissal motion, Mr. Nelson did not raise *any* arguments, or point to any place in the record, which  
20 would have shown that these claims were exhausted. *See Docket No. 30* at 11-12 (raising a general  
21 argument about the purpose of exhaustion). He thus did not carry his burden to show that he had  
22 exhausted state remedies. *See Darr v. Burford*, 339 U.S. 200, 218-19 (1950) (“petitioner has the  
23 burden . . . of showing that other available remedies have been exhausted”), *overruled on other*  
24 *grounds, Fay v. Noia*, 372 U.S. 391 (1963); *Cartwright v. Cupp*, 650 F.2d 1103, 1104 (9th Cir.  
25 1981) (affirming summary judgment for respondent because, although petitioner alleged he had  
26 exhausted, “there is nothing in the record” to show it). Moreover, the verbose and disorganized  
27 nature of the 700-page petition filed before the California Supreme Court impeded the Court’s  
28 attempt to discover, without petitioner’s assistance, whether these claims had been raised in state



1 court. *See, e.g.*, Recon Mot. at 40 (arguing that federal Claim 4 was raised in the California  
 2 Supreme Court petition at grounds 1, 4, 5, 11, 24, 26, or “are intertwined throughout” that  
 3 petition); *see also* Docket Nos. 25-9, 25-10, and 25-11 (700 pages filed with the California  
 4 Supreme Court, including hundreds of pages of handwritten argument, interspersed with dozens  
 5 of pages of transcripts and prison disciplinary records, and several dessert recipes).

6 The Court would be fully justified were it to deny Mr. Nelson’s motion for  
 7 reconsideration. *See Ybarra*, 656 F.3d at 998. Nonetheless, the motion is **GRANTED IN PART**  
 8 in the interests of justice because Mr. Nelson is a pro se litigant pursuing his liberty.<sup>3</sup>

9 Considering the additional information provided by Mr. Nelson, giving the state petition  
 10 the liberal construction due a pro se filing, and in the interests of justice, the Court reconsiders its  
 11 earlier order and concludes that Claims 4(a), (b), (d)-(f), 6, and 8 are exhausted.

12 **B. The Motion For Reconsideration Is Denied As To Claims 1d, 2, 4(c), and 7(c)**

13 The Court sees no reason to reconsider its prior conclusion that Mr. Nelson failed to exhaust  
 14 Claims 1d, 2, 4(c), and 7(c). Even with the extra argument presented in the motion for  
 15 reconsideration, Mr. Nelson fails to show that these claims were exhausted.

16 Mr. Nelson argues that federal Claim 1d was exhausted by ground 12 in his petition to the  
 17 California Supreme Court. *See Recon Mot.* at 45. However, ground 12 argues:

18           Petitioner[’]s incarceration is unlawful because he was deprived of  
 19           his Fifth, Sixth, and Fourteenth Amendment rights under the United  
 20           States Constitution, and Article I Section 7 of the California  
 21           Constitution, to due process resulting from being convicted, based  
 22           on an unreasonable determination of alleged evidence that was  
 23           insufficient to support the essential elements of the alleged crime  
 24           beyond a reasonable doubt.

25 Docket No. 25-10 at 152. The ground raised in state court thus does not argue that a cross-  
 26 examination was compromised as a result of a conspiracy between the prosecution and defense  
 27 counsel. *See id.*; *see also* Screening Order at 2

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28 <sup>3</sup> Mr. Nelson would do well to remember this dispensation in future filings, before accusing the  
 Court of “intentional delay/harassment tactics,” Recon Mot. at 13; “conscientiously setting [Mr.  
 Nelson] up to fail,” *id.* at 26; “team[ing] up with the AG,” *id.* at 27; being “incompetent,” *id.* at 28;  
 inflicting the “unreasonable burden” of a “steady flow of B.S. from this” Court upon Mr. Nelson,  
*id.* at 31; being “a psychopath rather than a fair-minded judge,” *id.* at 32; being “misleading,”  
 “deceptive,” and “bias[ed].” *id.* at 37, 38, 41, 52; and “consciously distorting the truth,” *id.* at 41.

1 Mr. Nelson argues that Claim 2 was exhausted by ground 29 in his petition to the  
2 California Supreme Court. *See* Recon Mot. at 39. However, ground 29 argues:

3 Petitioner[']s incarceration is unlawful because he was deprived of  
4 his Fifth, Sixth, and Fourteenth Amendment rights under the United  
5 States Constitution, and Article I, Sections 7, and 15 of the  
6 California Constitution, and P.C. 1473, to due process of law as a  
7 direct result of the prosecution[']s deliberate, willful introduction of  
8 false evidence at petitioner[']s June 9, 2014 preliminary hearing, and  
9 the erroneous suppression of patently exculpatory evidence.

10 Docket No. 25-11 at 68. The ground raised to the California Supreme Court makes no mention of  
11 a conspiracy between the prosecution and defense counsel to elicit false testimony, nor does it  
12 make arguments about false testimony being used at trial. *See id.*; *see also* Screening Order at 2.

13 As noted above, Mr. Nelson does not point to any place in the petition to the California  
14 Supreme Court which exhausted Claim 4(c). The Court therefore concludes this claim is unexhausted.

15 Mr. Nelson argues that Claim 7(c) was exhausted by ground 23 in his petition to the  
16 California Supreme Court. *See* Recon Mot. at 43 (arguing that federal Claim 7(c) was exhausted  
17 in state ground 23). The ground raised to the California Supreme Court argues that counsel was  
18 ineffective at sentencing. *See* Docket 25-11 at 20. It does not argue that counsel was ineffective  
19 at the stage of moving for a new trial. *See id.*; *see also* Screening Order at 2-3.

20 Because Mr. Nelson plainly has included unexhausted claims in his federal habeas petition,  
21 the Court's **DENIES** the motion for reconsideration as to Claims 1d, 2, 4(c), and 7(c).

#### 22 **IV. MR. NELSON MUST MAKE AN ELECTION**

23 At several points in his motion for reconsideration, Mr. Nelson suggests that he would like  
24 to be granted a *Rhines* stay so that he may exhaust his unexhausted claims. *See* Recon Mot. at 1,  
25 44-47; *see also Rhines v. Weber*, 544 U.S. 269, 277 (2005) (allowing a court to stay a so-called  
26 "mixed petition" of exhausted and unexhausted claims, so that a petitioner may return to state  
27 court to fully exhaust). However, he also states that he would like this stay "[i]f, and only if, [he  
28 is] left with no other choice." Recon Mot. at 44. Moreover, in the conclusion of his motion for  
reconsideration, Mr. Nelson argues that "this Court should dispense with requiring me to return to  
State Court to redundantly exhaust claims" because "[r]equiring me to return to State Court under  
the guise of exhausting the Claims at issue will only serve to [vex, harass, and to increase the

genuine risk's of impairing my ability altogether to to achieve resolution of my Constitutional claims in federal Court.” *Id.* at 48 (errors in original).

As the Court explained in its prior order, Mr. Nelson has more than one choice; he has three. *See* Docket No. 38 at 15-16. He may choose whether he wants to –

(1) dismiss the unexhausted claims and go forward in this action with only the exhausted claims, or

(2) dismiss this action and return to state court to exhaust all claims before filing a new federal petition presenting all of his claims, or

(3) file a motion for a stay of these proceedings while he exhausts his unexhausted claims in the California Supreme Court.

Thus, if Mr. Nelson wishes to avoid any delay that may result from a return to state court, he may select option 1 and dismiss the unexhausted claims.

Because it appears that Mr. Nelson misunderstood the options presented, the Court will allow Mr. Nelson an additional opportunity to elect how to proceed. The Court advises Mr. Nelson that his election should be **brief and unambiguous**.

## V. CONCLUSION

Mr. Nelsons motion for reconsideration is **GRANTED** as to Claims 4(a), (b), (d)-(f), 6, and 8. The motion for reconsideration is **DENIED** as to Claims 1d, 2, 4(c), and 7(c).

No later than **November 14, 2022**, Mr. Nelson must file a notice in which he states whether he chooses to

(1) dismiss this action and return to state court to exhaust all of his claims before returning to federal court to present all of his claims in a new petition, or

(2) dismiss the unexhausted claims and go forward in this action with only Claims 1a-1c, 3, 4(a), (b), (d)-(f), 6, 7a-7b, and 8-10, or

(3) move for a stay of these proceedings while he exhausts his state court remedies for the unexhausted claims.

If Mr. Nelson chooses Option (1) or Option (2), his filing need not be a long document; it is sufficient if he files a one-page document entitled “Notice of Choice By Petitioner” and states

1 simply: "Petitioner chooses to proceed under option \_\_\_\_ provided in the Order Of Partial  
2 Dismissal And Requiring Choice By Petitioner." Mr. Nelson would have to insert a number in  
3 place of the blank space to indicate which of the first two options he chooses. Alternatively, Mr.  
4 Nelson may circle his choice on this page, sign next to that choice, and return this page to the  
5 Court.

6 If Mr. Nelson chooses Option (3), then no later than **November 14, 2022**, Mr. Nelson must  
7 file a motion for a stay in which he explains why he failed to exhaust his unexhausted claims in  
8 state court before presenting them to this Court, that his claims are not meritless, and that he is not  
9 intentionally delaying resolution of his constitutional claims.

10 If Mr. Nelson does not choose one of the three options by the deadline, the Court will  
11 assume that Mr. Nelson has elected option (2) and will dismiss this action so that Mr. Nelson may  
12 exhaust his claims in state court. No additional motions for reconsideration by Mr. Nelson will be  
13 considered.

14 This order disposes of Docket No. 41.

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16 **IT IS SO ORDERED.**

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18 Dated: September 30, 2022

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22 EDWARD M. CHEN  
23 United States District Judge  
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